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Against Centralization

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There is much to admire in Georgette Poindexter's *Beyond the Urban-Suburban Dichotomy*.¹ Poindexter rightly emphasizes how poor many American suburbs are, and insightfully demonstrates the special nature of the problems of concentrated poverty in suburban rather than central city locations. But when she turns to her suggestions about what to do about the current concentration of poverty in America, she seems to embrace a vision that is common among urban scholars. One ingredient in that vision is centralization: only the exercise of state and federal power or regional government, these scholars suggest, can redirect America's urban policy in a way that can improve the lives of the poor. A second ingredient is the kind of urban policy they want centralized government to adopt: they imagine the creation of programs specifically targeted at the problems facing America's poor.

We have seen this vision before; it is 1960s-style liberalism. The Great Society, one should recall, was an effort to mobilize the power of centralized government (in particular, the power of the federal government) to win the war Lyndon Johnson had declared against poverty. Since I myself was a '60s liberal, I find much in this vision that stirs the heart. But I think that it is high time that we admit that this '60s strategy is not going to be implemented. The era of big government, we have been authoritatively told, is over. The war against poverty is over too. If so, we need to reject both ingredients in the standard vision: its reliance on centralization and its focus on concentrated poverty.

Let us start with the embrace of centralization. Like

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1. Georgette Poindexter, *Beyond the Urban-Suburban Dichotomy: A Discussion of Sub-Regional Poverty and Concentration*, 48 BUFF. L. REV. 67 (2000).

many others, Poindexter presents centralization as the only alternative to the current fragmentation of America's metropolitan areas into dozens (often, hundreds) of autonomous jurisdictions, each of which is empowered to advance its own self-interest at the expense of its neighbors.² One form these writers see this centralization taking is federal legislation: they rely on housing policies adopted by the U.S. Department of Housing and Urban Development or on federal transportation policies like the 1991 Intermodal Surface Transportation Efficiency Act. Another is state government initiatives, such as the establishment of urban growth boundaries and environmental protection laws. Moreover, in the style of the 1960s, these scholars tend to think of centralization not just in terms of federal and state legislation but also in the form of federal and state court decisions. Poindexter cites with approval, for example, efforts undertaken by a federal district court in the late 1960s and early 1970s to place public housing built for the African-American poor in the suburbs, efforts upheld (with many qualifications) by the United States Supreme Court.³ Still, the most popular form of centralization that current writers now embrace is the creation of a powerful, multi-functional regional government. Strong regional governments, they suggest, can best undertake the tasks of integrating housing, transportation, and jobs—and of allocating waste disposal facilities and other noxious land uses—in a way that would alleviate concentrated poverty in metropolitan America.

The reason that this reliance on centralization is so problematic is that the prevailing conceptual framework that now dominates thinking about metropolitan governance presents local governmental power as the exercise of freedom and centralized decision making as the exercise of coercion. The status quo in metropolitan America—racial and class segregation, car-centered transportation systems, ever-increasing suburban sprawl—is widely associated with “what people want.” In sharp

2. Books published in the 1990s include, for example, DAVID RUSK, *INSIDE GAME OUTSIDE GAME: WINNING STRATEGIES FOR SAVING URBAN AMERICA* (1999); MYRON ORFIELD, *METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY* (1997); ANTHONY DOWNS, *NEW VISIONS FOR METROPOLITAN AMERICA* (1994); and NEAL PEIRCE, *CITISTATES: HOW URBAN AMERICA CAN PROSPER IN A COMPETITIVE WORLD* (1993).

3. See *Hills v. Gautreaux*, 425 U.S. 284 (1976).

contrast, suburban residents treat the egalitarian and integrationist goals that Poindexter seeks to accomplish through centralization as efforts to revive policies—like “forced busing”—that have been repudiated for a generation. And suburban residents are not alone in their distrust of centralized power. Many African-American mayors of declining central cities have become equally enamored of local power, preferring to run their cities in their own way rather than submit to centralized control. Moreover, it is not just federal or state mandates—or judicial activism—that are routinely condemned as efforts to force people to adopt policies that they would not choose for themselves. Regional government is usually understood as simply one more form that this centralized coercion would take. As a result, “almost no one favors metropolitan government,” as Anthony Downs puts it, “except a few political scientists and intellectuals.”⁴

I do not think that the best strategy to counteract this picture is to try to convince people that centralization is in fact a good idea. Instead, I think that those who share Poindexter’s goals—and I am one of them—need to develop an alternative to centralization better than the status quo. Doing so requires institutional imagination: it requires creating a form of decentralization different from the one now embraced by local government law yet equally associated with the exercise of freedom. In my view, it is the current definition of decentralization—not the idea of decentralization itself—that has led to the inequities that Poindexter seeks to correct.

This current definition is the product of dozens of legal rules. Here I shall mention only two. Cities within the metropolitan area have the power to design what their community looks like, and, as everyone knows, many cities have used this zoning power to exclude the kind of people they consider “undesirable.” This power is normally accompanied by a second important legal power: the ability of city residents to treat the property within their city limits as their own property—as a resource that can be used to support the people who live within city boundaries and no one else. The reason that prosperous communities can support their services in a much more lavish way than can their poorer neighbors, in other words, is that they are

4. DOWNS, *supra* note 2, at 170.

entitled to exclude the poor not only as residents but as beneficiaries of public spending.

These two rules reflect a privatized definition of city power. The reason that I call it privatized is that these rules are derived from the legal rules that define private property. The first power—the right to exclude “undesirables”—is, in fact, often thought of as the very essence of the property right.⁵ To have private property, it is frequently said, means the ability to prevent uninvited people from entering one's property—let alone moving in. The second power—the basis of local finance—is equally associated with the notion of private property. The idea that you can treat the property located within the city boundaries as a resource available only to city residents analogizes it to property that is jointly owned by the residents. That is why any suggestion that taxes raised on the property located within a city's boundaries should be spent elsewhere is so often experienced as the reallocation of wealth. These property-based images have so powerfully influenced the definition of city power that it is easy to forget that the legal rules I am describing define an aspect of governmental power, not the power of a private entity—they define what cities are and what they can do.

This privatized conception of city power has enabled people to adopt another privatized conception of cities. This is the notion that the way to think about where to live in a metropolitan area is to shop for cities—in the same way that one shops for any consumer good—by calculating how much a particular package of city services costs in city taxes.⁶ People who think in this way move to wealthy communities, if they can afford to do so, because they thereby save the money that they would have spent on the poor had they remained in a class-integrated jurisdiction. The reason they can avoid taxes paid by those they leave behind, one should recognize, is that they can exclude the poor through exclusionary zoning and limit their schools and other services to city residents. As the wealthy move to

5. See Cohen, *Dialogue on Private Property*, 9 RUTGERS L. REV. 357, 374 (1954).

6. This conception is widely associated with Charles M. Tiebout's *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956), but the crucial assumptions recognized by Tiebout when constructing his economic model (such as equal access to mobility) are routinely omitted in the popular version of the idea referred to here.

their suburbs with this cost-consciousness in mind, taking their resources with them, the cities they abandon begin to decline. As a result, people in the middle class move to their own suburbs and exclude those poorer than they are, and the central cities decline even further. Ultimately, the central cities—and the suburbs that Poindexter describes where the poor also live—become very poor (although some retain pockets of the rich living in their own isolated neighborhoods). What I am describing here is a self-perpetuating cycle: the more the suburbs are built on the ideas of private property and consumer choice, the more the metropolitan area becomes divided into spaces readily identifiable in terms of the income level of their inhabitants.

This is the status quo that is so often described as “what people want.” In order to rethink the legal structure that has helped bring this status quo into being we have to recognize that it can also be understood as producing a metropolitan landscape that people do not want. Emphasizing the environmental problems caused by suburban sprawl is the usual way this point is made these days.⁷ It is simplistic to assume, advocates of “smart growth” contend, that those who are moving to the outer suburbs are in favor of sprawl. On the contrary, they say, people who are moving further and further from the central city are actually seeking to escape sprawl rather than to embrace it: what they want is being surrounded by nature, not more strip malls and traffic jams. As a result, even those who are contributing to sprawl by moving out can be part of a constituency to end it. So can the farmers whose land is threatened with development, as well as everyone else in the region, wherever they live, who value the ability to enjoy natural beauty unspoiled by development. Moreover, this environmental argument only begins to touch the problems generated by the incentives to exit fostered by current legal rules. I have written elsewhere about four other categories of metropolitan residents hurt by suburban sprawl: women whose ability to combine their professional and family life is frustrated by long commuting time and lack of access to nearby child care; elderly people

7. See, e.g., <<http://www.epa.gov/region01/ra/sprawl/sprawl.html>> (“Smart Growth Strategies for New England”) (Nov. 8, 1999) (on file with the *Buffalo Law Review*).

who are prevented from remaining in their neighborhood because zoning rules prohibit them from subdividing their house to make room for family members or because the decline of their neighborhood (or its gentrification) makes it impossible to stay; residents of the vast areas of the metropolitan area—central cities, middle-class suburbs, and the poor suburbs that Poindexter describes—who are hurt by the disinvestment produced when businesses follow the wealthy to the outer suburbs; and middle-class African-Americans, now living in their own suburbs, who are increasingly isolated both from white suburban residents and from the poor African-Americans they left behind.⁸ Many more kinds of people can be added to this list.

A revised local government law needs to be built upon this variety of problems metropolitan residents now experience with the status quo. That is why the second ingredient in Poindexter's programmatic vision—her focus solely on the problems of concentrated poverty—has to be rejected. Instead of focusing solely on the effect of the status quo on the poor, their problems should be understood as simply one ingredient in the widespread difficulties caused by the current metropolitan landscape. The Charter of the Congress of the New Urbanism—a group of architects, planners, and others interested in restoring urban centers and reconfiguring the nature of suburban sprawl—has made the interrelationship among the problems now facing metropolitan residents a primary focus. "The Congress for the New Urbanism views disinvestment in central cities, the spread of placeless sprawl, increasing separation by race and income, environmental deterioration, the loss of agricultural lands and wilderness, and the erosion of the society's built heritage as one interrelated community-building challenge."⁹

Local government law needs to be reformulated so that it too views these issues as one interrelated community-building challenge. This does not require the centralization of power. Even the metropolitan residents who recognize the pervasive problems created by the status quo object to centralization. Instead of the abolition of local power, what

8. See GERALD FRUG, *CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS* 154-164 (1999).

9. <<http://www.cnu.org>> (Nov. 8, 1999) (on file with the *Buffalo Law Review*).

is needed is a modification of the sprawl-generating mechanism built into current law. No one thinks it irrational for people to enrich themselves, if they can, by adopting as their own the incentive system that local government law now embraces. These individual decisions, however, have had collective consequences that even those who have been enriched by them do not like. These undesirable consequences cross existing city borders, and those affected by them—environmentalists, mothers working outside the home, the elderly, residents of declining cities, African-Americans, and the poor, among many others—are themselves spread throughout the area. Any attempt to bring this wide variety of people together to solve the problems caused by unlimited suburban growth is frustrated, however, by the “us versus them” mentality built into the current privatized definition of city power. No doubt, a conversation among the different kinds of people disserved by current rules would generate a considerable amount of conflict about how to change them. Still, the first step is to begin the conversation.

I have written elsewhere about the kind of regional institutions that might best facilitate such a conversation and, thereby, promote a less privatized conception of the decentralization of power.¹⁰ In this short comment, I simply want to convince you that there is no reason to identify centralization with the ability to solve inter-jurisdictional problems and decentralization with the protection of local selfishness. Historically, centralization has been a major contributor to the promotion of local selfishness, and the conventional definition of federalism is simply the most familiar attempt to recognize that entities that exercise decentralized power can together form an indivisible union.¹¹ An important aspect of any metropolitan-wide discussion should be an enumeration of the decisions made by centralized government that have contributed to metropolitan fragmentation. By this I mean not only highway funding and decisions about land use (such as the failure to impose growth boundaries), but the definition of city power adopted by state law. An equally important focus

10. See FRUG, *supra* note 8, at 85-89, 106-09.

11. The best analysis of the relationship between centralization and the promotion of local separatism is in Richard T. Ford, *Law's Territory (A History of Jurisdiction)*, 97 MICH. L. REV. 843 (1999).

should be an analysis of the ways in which current zoning rules and financing rules have affected metropolitan residents generally, not simply those who live in the areas of concentrated poverty. Once this impact becomes well understood, metropolitan residents can begin to explore how current rules can be changed without abandoning the decentralization of power. Zoning rules that recognize the impact that exclusionary zoning imposes on outsiders can still empower local people to make decisions about land use. Financing rules that limit the preference that the current system offers insiders—in a way similar to Commerce Clause restrictions on local protectionism¹²—can retain, even increase, local control over the delivery of services such as education while remedying the scandalous inequality that the current system generates. Because the greatest problem now facing America's poor is their isolation,¹³ addressing the problems of concentrated poverty requires breaking the connection between the concept of decentralized power and the separation and division of the metropolitan population. But the same observation should be made about everyone else: the urban policy of separation and division now embodied in local government law limits the lives of everyone in America's metropolitan areas.

12. *See* *Dean Milk Co. v. City of Madison*, 340 U.S. 349 (1951).

13. *See, e.g.*, PAUL JARGOWSKY, *POVERTY AND PLACE: GHETTOS, BARRIOS, AND THE AMERICAN CITY* 193 (1997).